



Housing Division

**HOME Investment Partnerships Program (HOME)
and
Housing Trust Fund Program (HTF)**

Affordable Housing Development Grant Administration Manual

Housing@mt.gov

<https://housing.mt.gov/Multifamily-Development/HOME-Program>

<https://housing.mt.gov/Multifamily-Development/Housing-Trust-Fund>

Acronyms and Abbreviations

Acronym/Abbreviation	S/O Term
AAP	Annual Action Plan
ACM	Adult Case Management
ACS	American Community Survey
ADLs	Activities of Daily Living
AHAR	Annual Homeless Assessment Report
AI	Analysis of Impediments to Fair Housing Choice in Montana
AMDD	Montana Department of Public Health and Human Services, Addictive and Mental Disorders Division
AMI	area median income
CAPER	Consolidated Annual Performance and Evaluation Report
CARES Act	Coronavirus Aid, Relief, and Economic Security Act
CDBG	Community Development Block Grant
CDC	Centers for Disease Control and Prevention
CDD	Montana Department of Commerce, Community Development Division
CDU	condition, desirability, and usefulness
CES	Coordinated Entry System
CHDO	Community Housing Development Organization
Commerce	Montana Department of Commerce
ConPlan	Consolidated Plan for Housing and Community Development
CPD	Community Planning and Development (HUD)
CSBG	Community Services Block Grant
CTAP	Community Technical Assistance Program
DLI	Montana Department of Labor and Industry
DOR	Montana Department of Revenue
DPHHS	Montana Department of Public Health and Human Services
ED	Economic Development
ESG	Emergency Solutions Grant
GED	General Education Development
HCHV	Health Care for Homeless Veterans
HCV	Housing Choice Voucher
HMIS	Homeless Management Information System
HOME	HOME Investment Partnerships Program
HOPWA	Housing Opportunities for Persons with AIDS
HQS	Housing Quality Standards
HRDC	Human Resource Development Council
HTF	Housing Trust Fund
HUD	U.S. Department of Housing and Urban Development
LBP	lead-based paint
MCA	Montana Code Annotated
MH	Montana Department of Commerce, Board of Housing
MTCoC	Montana Continuum of Care Coalition
NASCSP	National Association of State Community Service Providers

Acronym/Abbreviation	S/O Term
NOFA	Notice of Funding Availability
OPI	Montana Office of Public Instruction
P.A.T.H.	Projects for Assistance in Transition from Homelessness
PBRA	project-based rental assistance
PHA	Public Housing Authority
PIT	“Point-In-Time” Homeless Survey aka Montana Housing Status Survey
REAC	Real Estate Assessment Center
SSVF	Supportive Services for Veteran Families
TBRA	tenant-based rental assistance
UPCS	Uniform Physical Condition Standards
USDA-RD	U.S. Department of Agriculture, Rural Development
VA	U.S. Department of Veterans Affairs
W2ASACT	Water, Wastewater and Solid Waste Action Coordinating Team

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1. Overview

The State of Montana (State) Department of Commerce (Commerce) supports the development and preservation of affordable housing for low-, very low-, and extremely low-income households. With its annual funding allocation from the U.S. Department of Housing and Urban Development's (HUD) HOME Investment Partnerships Program (HOME) and Housing Trust Fund Program (HTF), Commerce funds the rehabilitation, new construction, and acquisition of affordable rental housing as well as the new construction of single-family homes for homeownership and down payment assistance for homebuyers. HOME was created under Title II of the Cranston-Gonzalez National Affordable Housing Act of 1990 with implementing regulations at 24 CFR Part 92; HTF was established under Title I of the Housing and Economic Recovery Act of 2008 with implementing regulations at 24 CFR Part 93.

HOME and HTF are intended to maintain and expand the supply of decent, safe, sanitary, and affordable housing. Both programs require income targeting. HOME focuses on households at or below 80% area median income (AMI) with targeting of very low-income households at or below 50% AMI and households at or below 60% AMI; HTF is focused on extremely low-income households with incomes at or below 30% AMI.

Commerce's HOME and HTF funds may be used as gap funding for projects in Montana. Both programs target multifamily rental housing, and, in addition, HOME funds may be used for the development of single-family housing for purchase. In both programs, homes must be affordable to households at or below each program's applicable income limits. In exchange for funds, grantees agree to terms and conditions set forth by Federal and State authorities. Upon grant closeout, property owners agree to income, rent, and other restrictions for a period of affordability (POA), which is determined by funding source and level of investment. HOME- and HTF-assisted properties are monitored for compliance throughout the POA.

HOME and HTF funds may be used in conjunction with other funding sources, including but not limited to Community Development Block Grant (CDBG) funds and Housing Credit investments, which are also overseen by Commerce. When multiple funding sources are combined in one project, developers, owners, and sponsors must coordinate each funder's requirements to ensure compliance.

This document presents the requirements for HOME and HTF grant administration for primarily multifamily rental projects. Additional information specific to single-family projects is provided where applicable. In most cases, the requirements for HOME and HTF are the same and Commerce's goal is to operate the two programs in a unified fashion, but it should be noted there are important distinctions between the programs which are identified in this manual.

For information about HOME and HTF housing development application requirements, refer to application guidelines published annually for each program. For information regarding multifamily and single-family housing POA requirements¹ and for more discussion about homebuyer assistance activities supported through HOME funding, see applicable manuals published by Commerce.

¹ Information about POA compliance for HOME rental properties is available in HUD's resource *Compliance in HOME Rental Projects: A Guide for Property Owners*, which is available online at <https://www.hudexchange.info/resource/2395/compliance-in-home-rental-projects-a-guide-for-property-owners/>.

2. General Requirements

Tools and Resources:

- ✓ *State of Montana Consolidated Plan, Annual Action Plan (AAP), and Consolidated Annual Performance & Evaluation Report (CAPER)*²

2.1 Eligible Applicants

Developers and owners of affordable rental housing and those developing single-family homes for homeownership are eligible to apply for HOME and HTF funding subject to certain program-specific limitations. For HOME, all cities, towns, counties; nonprofits including State-designated Community Housing Development Organizations (CHDOs); and Public Housing Authorities (PHAs) are eligible. For HTF, entitlement cities, nonprofits, and PHAs are eligible. For more information, see application guidelines for both programs and Section 6 of this manual ([Quick Reference](#)).

2.2 Eligible Projects

HOME and HTF funds will be provided for acquisition, new construction, and rehabilitation of multifamily residential rental projects, as well as new construction of single-family homes for homeownership. While Commerce will entertain any proposals meeting its criteria, in practice most projects will also require other public and/or private investment to be economically feasible. HOME funds may also be used to provide homebuyer assistance (see the HOME Homebuyer Assistance Administration Manual for more information).

2.3 Funding Parameters

To qualify for a HOME/HTF grant, a project must demonstrate the need for an investment of no less than \$1,000 in HOME/HTF funding per HOME-/HTF-assisted unit. Note that in projects with more than one HOME-/HTF-assisted unit, this minimum is an average per-unit subsidy.

Commerce may establish a maximum cap on its HOME/HTF investment in a single project. Such a limit will be based on the availability of funding and other State priorities and will be set forth in application guidelines.

HOME

In no case will Commerce's investment exceed the maximum HOME investment allowed under 24 CFR 92.250. The maximum per-unit HOME subsidy is published each year by HUD, is available as a link on Commerce's website, and will generally be provided as part of the Uniform Application, a multi-tabbed Excel form that is submitted along with other materials requested in the HOME application guidelines.

Match

Regulations at 24 CFR 92.218 require matching contributions for HOME investments. Commerce's overall match liability, which must be satisfied by the end of each federal fiscal year, is no less than 25%

² The Consolidated Plan is a 5-year planning document for HUD funds that identifies how the State will address housing and other community development needs. The consolidated planning process, which includes the Consolidated Plan, AAP, and CAPER, is the framework the State uses to identify its goals and priorities. Consolidated Plan information and documents are available here: <https://commerce.mt.gov/conplan>.

of HOME funds it spends on affordable housing. Matching contributions add to the resources available for HOME-assisted or HOME-eligible projects and must come in the form of a permanent contribution to affordable housing. Investments from state and local governments or the private sector likely qualify as match, whereas federal funds do not. Owner equity, including investments through Low Income Housing Tax Credits (LIHTC), does not qualify as matching funds for HOME-assisted projects.

Eligible sources of match for HOME funds include:

- Cash;
- Donated construction materials or volunteer labor;
- Value of donated land or real property;
- Value of foregone interest, taxes, fees, or charges levied by public or private entities;
- Present value of interest savings from below market rate loans;
- Investments in on- or off-site improvements;
- Proceeds from bond financing;
- The cost of supportive services provided to families living in HOME units; and
- The cost of homebuyer counseling to families purchasing HOME-assisted units.

To meet its match obligation, Commerce requires grantees to make matching contributions on a per-project basis. Application guidelines specify the minimum match requirements for assisted projects.

HTF

Regulations at 24 CFR 93.300 require Commerce to establish a maximum subsidy limit for units assisted with HTF funding as part of the State's annual HTF Allocation Plan, which is included in Commerce's Annual Action Plan (AAP).³

In no case will Commerce's investment exceed the limits established in the HTF Allocation Plan as approved by HUD. The maximum per-unit HTF subsidy will mirror HOME's, which is published each year by HUD, is available as a link on Commerce's website, and will generally be provided as part of the Uniform Application, a multi-tabbed Excel form that is submitted along with other materials requested in the HTF application guidelines.

Match

Match is not required for HTF investments; however, Commerce will consider whether projects leverage other funding sources to achieve the goals of HTF when scoring applications.

2.4 Eligible Costs

Costs paid with HOME funds must be eligible according to HOME statute at 24 CFR 92.206; costs paid with HTF funds must be eligible according to 24 CFR 93.201. The following additional limitations also apply:

- HOME/HTF funds shall not be used for luxury improvements (24 CFR 92.205 and 24 CFR 93.200, respectively).
- HOME/HTF funds may not be used to pay operating costs or to capitalize reserves with some exceptions.

³ The AAP is available online at <https://commerce.mt.gov/conplan>.

- HOME/HTF funds shall not be used for non-residential accessory structures such as free-standing community/leasing buildings, garages, carports, or maintenance structures. However, HOME/HTF funds may be used for community space or common laundry facilities included in residential buildings.
- HOME/HTF funds shall not be used for off-site infrastructure costs, including any costs associated with extending infrastructure to the project site. The cost of connecting to public infrastructure located in an adjacent right-of-way (e.g., water or sewer tap) is eligible.
- HOME/HTF funds shall not be used for organizational costs such as partnership formation or syndication costs associated with transactions using equity from LIHTC, historic tax credits, or other similar tax incentives.

Cost Reasonableness

Per the requirements of 24 CFR 92.250(b) for HOME and 24 CFR 92.300(b) for HTF, all project costs must be reasonable, whether paid directly with HOME and HTF funds or not. Commerce will review all project costs, both hard and soft, to evaluate reasonableness.

2.5 Conflict of Interest

To comply with HOME and HTF requirements and to maintain a high standard of accountability to the public, conflicts of interest and perceived conflicts of interest must be avoided. No employee, officer, or agent covered by the conflict of interest provisions who exercise or have exercised any functions or responsibilities with respect to activities assisted with HOME- or HTF-funds or who are in a position to participate in a decision-making process or gain inside information with regard to these activities may obtain a financial interest or financial benefit from the HOME- or HTF-assisted activity, or have a financial interest in any contract, subcontract, or agreement with respect to the HOME- or HTF-assisted activity, or the proceeds from such activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for 1 year thereafter.

Recipients whose projects have a potential or actual conflict of interest must disclose that to Commerce to coordinate efforts to inform the public and to ensure proper steps are taken to address the conflict.

Recipients shall comply with all HUD conflict of interest provisions at 24 CFR 92.356 for HOME and 24 CFR 93.353 for HTF. Developers and owners with employees, family members, consultants, or agents that are eligible to occupy HOME- or HTF-assisted units must receive approval from Commerce before entering into a lease with said eligible parties. 24 CFR 92.356(f) provisions apply to all HOME projects; 24 CFR 93.353(f) provisions apply to all HTF projects.

Recipients that are local governments, as well as elected officials, are also subject to the following codes relevant to conflicts of interest: Sections 2-2-12, 2-2-201, 7-3-4256, 7-3-4367, 7-5-2106, and 7-5-4109, MCA. These laws must always be followed by local governments, regardless of their participation in the HOME and HTF programs.

2.6 Environmental Review

Federally assisted projects are subject to a variety of environmental requirements. Grantees and developers should be familiar with these requirements and are strongly encouraged to discuss any questions they have with Commerce prior to entering into a purchase agreement or submitting an application to Commerce. For more information, see Section 3.5 of this manual ([Environmental Review](#)).

2.7 Property Standards

To meet both HOME and HTF regulations and Commerce goals, all projects must meet certain physical standards intended to provide quality affordable housing that is durable and energy efficient.

- Construction must meet all state and local codes, as well as Uniform Physical Conditions Standards (UPCS).
- All projects must meet applicable Section 504/Uniform Federal Accessibility Standards requirements. New construction or substantial rehabilitation projects with five or more total units must ensure 5% of the project's units are accessible for residents with mobility impairments and another 2% of the project's units are accessible to residents with sensory impairments. Other rehabilitation projects will be required, to the maximum extent feasible, to provide mobility and sensory accessible units in the same percentages. Additionally, buildings with four or more units must also meet the design and construction requirements required by the Fair Housing Act as outlined in 24 CFR 100.205 so that the public or common use areas of the building can be approached, entered, and used by individuals with physical disabilities.
- All projects newly constructed or reconstructed must incorporate the three basic visitability features: a zero-step entrance, doors with 32 inches of clear passage space, and a wheelchair-accessible half-bathroom on the main floor. All projects rehabilitated are encouraged to incorporate visitability features where feasible.
- All projects must be designed for energy efficiency. Measures may include solar deployment, low-flow faucets, energy star appliances, etc.
- All buildings of five or more residential units in new construction or substantial rehabilitation must include the installation of "broadband infrastructure" as defined by 24 CFR 5.100 to include cables, fiber optics, wiring, or other permanent infrastructure, including wireless infrastructure, that is capable of providing access to Internet connections. In limited circumstances, Commerce may waive this requirement if the project's location makes such installation infeasible or creates an undue financial burden. In practice, this requires the developer to provide the wiring for high-speed Internet but does not require the project to provide the Internet service itself.

2.8 Rental Unit Allocation

Grantees have the option for their HOME-/HTF-assisted rental units to be designated as either floating or fixed. To provide the most flexibility in the long-term management of rental properties, HOME and HTF units are generally designated as "floating" and evenly distributed among the unit types in the development. If the project's units are not comparable⁴ (i.e., sufficiently similar in configuration, size, amenities, and finishes as to be interchangeable), "fixed units" must be designated. In the case of projects with comparable units, Commerce will designate units as HOME- or HTF-assisted in proportion to the percentage of HOME or HTF investment in the transaction. For example, if HOME represents 10% of the project's total HOME-eligible cost, at least 10% of each unit type will be designated as HOME-assisted. Throughout the project, and prior to project completion, Commerce will conduct analyses of the project to ensure the unit mix is accurate and meets HUD's "fair share" test. The Uniform Application includes a tool to assist with calculating the minimum number of required HOME- and HTF-assisted units based on proposed sources and uses of project funding.

⁴ Comparability in terms of size is typically defined as variance within 5% of the average square footage for a unit type.

HOME-assisted rental units shall be designated as either “High HOME units” or “Low HOME units.” In projects with five or more HOME-assisted units, at least 20% of the HOME units, rounded up to a whole number, must be designated as Low HOME units. Generally, Commerce will only designate the minimum number of Low-HOME units required unless the applicant requests that additional Low HOME units be designated to coordinate income and rent restrictions with other project requirements. All HTF-designated units will have the same rent limits and income restrictions, i.e., there are no distinctions for High and Low HTF units.

2.9 Income, Rent, and Other Restrictions

HUD releases income and rent limits by county annually for both the HOME and HTF programs. HUD’s published limits are available online at the following locations:

- <https://www.hudexchange.info/programs/home/home-income-limits/>
- <https://www.hudexchange.info/programs/home/home-rent-limits/>
- <https://www.hudexchange.info/programs/htf/htf-income-limits/>
- <https://www.hudexchange.info/programs/htf/htf-rent-limits/>

Income Limits

HOME

All HOME-assisted rental and homeowner units must be occupied by households with incomes that do not exceed 80% AMI for the county, as adjusted by family size.

At initial occupancy, at least 90% of HOME-assisted rental units must be occupied by residents with household incomes at or below 60% AMI (this is often referred to as the “90 at 60” or Program Rule). The balance of assisted rental units must be occupied by residents with household incomes that do not exceed 80% AMI. This initial income targeting requirement does not apply throughout the POA.

For properties with five or more HOME-assisted rental units, HOME requires deeper income targeting. Properties meeting HUD’s threshold must ensure that at least 20% of their HOME-assisted rental units are occupied by residents with household incomes at or below 50% AMI (this is referred to as the “20 at 50” or Project Rule). The balance of assisted rental units must be occupied by residents with household incomes that do not exceed 80% AMI. Units subject to the 50% AMI income limit are designated “Low HOME units” while others are designated “High HOME units.” This income targeting requirement applies throughout the POA.

For single-family homes for homeownership, households must be income eligible at the time of sale. Additionally, each household must meet underwriting criteria, complete homebuyer education, qualify for a non-predatory mortgage, and agree to use the home as their principal residence. The developer is required to enforce resale provisions in the event the home is sold within the POA.

HTF

HTF units must be rented exclusively to residents with household incomes at or below HUD-published limits for extremely low-income families. While calculated and published by HUD, the limit is 30% AMI for the county in which the project is located or the poverty rate, whichever is higher.

Rent Limits

The HOME and HTF rent limits are gross rent limits. Total rent is the tenant-paid rent, plus any tenant-paid utilities, plus any tenant-based rental subsidy. The total rent cannot exceed the HUD-published rent limits for the HOME and HTF programs. Rents are not required to be as high as the published limits.

Homeownership Value Limits

For single-family homes for homeownership, home purchase prices are limited by the HOME Homeownership Value Limits that HUD publishes annually.⁵ As stated earlier, the developer is required to enforce resale provisions in the event the home is sold within the POA.

HOME

- High HOME units must be rented at or below the High HOME rent as published by HUD.
- Low HOME units must be rented at or below the Low HOME rent as published by HUD.
- If the HOME unit receives federal or State project-based rental subsidy, and the resident is low-income and pays as a contribution toward rent not more than 30% of their adjusted income, the maximum rent is the rent allowable under the federal or State project-based rental subsidy program.

HTF

- HTF units must be rented at or below the HUD-published HTF rent for extremely low-income households.
- If the HTF unit receives federal or State project-based rental subsidy, and the resident is low-income and pays as a contribution toward rent not more than 30% of their adjusted income, the maximum rent is the rent allowable under the federal or State project-based rental subsidy program.

During the POA, adjustments to rent schedules will be reviewed and approved by Commerce.

Utility Allowances (UA)

When rental property residents pay for utilities, a utility allowance (UA) must be determined, approved by Commerce, and factored into total rent.

HOME and HTF regulations—24 CFR 92.252(d) and 24 CFR 93.302(c), respectively—require that the UA for a project be based on the type of utilities used at the property. The UA is to be established using a project-specific methodology based on actual utility usage at the property or an estimated allowance based on project-specific factors such as size, orientation, building materials, mechanical systems, and construction quality, as well as local climate conditions.

PHA area-wide UAs prepared for the housing choice voucher program are currently not an acceptable method of calculating UAs but may continue to be used for projects awarded HOME funds prior to August 23, 2013. Projects awarded funds after August 23, 2013, must use the HUD Utility Schedule Model (HUSM)⁶ to calculate UAs. In their application, grantees specify a methodology, which Commerce

⁵ The HOME Homeownership Value Limits are available online at <https://www.hudexchange.info/resource/2312/home-maximum-purchase-price-after-rehab-value/>.

⁶ The HUSM is available online at <https://tools.huduser.gov/husm/uam.html>.

reviews and approves. The same methodology must be used for all assisted rental units within a single project.

During the POA, adjustments to UAs will be reviewed and approved by Commerce.

Income Verification

All grantees shall use the HUD Part 5 definition of income for determining income eligibility in HOME- or HTF-assisted projects. Prior to signing a lease or purchasing a home, household income must be verified using at least 2 months of source documentation (e.g., pay stubs, wage statements, account statements, benefit statements, etc.) in accordance with 24 CFR 92.203(a)(1)(i) for HOME and 24 CFR 93.151(d) for HTF. Third-party verification is only acceptable when other source documentation is not available. Further information regarding income verification can be found in the HUD resource *Technical Guide for Determining Income and Allowances for the HOME Program*.⁷

2.10 Prohibition on Certain Fees to Residents

Grantees may not charge fees to program beneficiaries to cover costs related to administering the HOME and HTF programs as outlined in 24 CFR 92.214 for HOME and 24 CFR 93.204 for HTF. Rental project owners may not charge residents fees that are not customarily charged to residents of rental housing (e.g., laundry room access fees).

2.11 Reporting and Recordkeeping

To allow effective oversight of funded projects and document compliance with applicable HOME and HTF requirements, grantees must maintain adequate and sufficient records and submit periodic reports to Commerce. In general, records are retained for 5 years after project closeout. Specific reporting and recordkeeping requirements from project award to closeout are discussed throughout this document.

Commerce reserves the right to require additional reporting or to alter the reporting format or frequency based on future changes to HOME and HTF requirements or State policy. Additionally, Commerce reserves the right to require additional or more frequent reporting for projects with compliance deficiencies.

⁷ HUD's technical guide is available online at <https://www.hudexchange.info/resource/786/technical-guide-for-determining-income-and-allowances-for-the-home-program/> and should be used in conjunction with the most current list of Inclusions/Exclusions.

3. Start-Up

Tools and Resources:

- ✓ *Start-Up Requirements Checklist*

Upon receiving a HOME or HTF award, grantees must complete start-up conditions as outlined below. All start-up conditions must be completed within 9 months of the date of award letter. If projects encounter delays and are unable to meet start-up conditions in the 9-month timeframe, the grantee must notify Commerce so that an extended timeframe can be considered and, if approved, an extension can be authorized.

Note that project costs incurred on or after the date of award letter are eligible for reimbursement once start-up conditions are met. If projects fail to meet start-up requirements or comply with the terms and conditions of the executed HOME/HTF contract, or if costs are otherwise ineligible for HOME/HTF funding, costs incurred will be the sole responsibility of the grantee.

3.1 Project Budget

Tools and Resources:

- ✓ *Budget Template*

The preliminary project budget submitted in the grant recipient's application must be updated to reflect anticipated sources and uses of funds at the time of contract execution. The updated budget will be attached to and incorporated by reference into the contract. The budget included in the contract must be acceptable to all funding sources identified.

When the project is ready to begin construction, the budget will again need to be revised to reflect the actual amount of the selected construction bid. If the construction bid is less than the amount budgeted, construction line items must be revised to reflect reduced costs. For information on amending the project budget after a contract has been executed, see Section 4.6 ([Project Amendments](#)).

3.2 Project Implementation Schedule

Tools and Resources:

- ✓ *Implementation Schedule Template*

The project implementation schedule submitted in the grant recipient's application must be updated to reflect conditions at the time of contract execution. The updated implementation schedule will be attached to and incorporated by reference into the contract. The final implementation schedule included in the HOME/HTF contract should identify all key tasks and more precisely define, if possible, when each must be accomplished to complete the overall project. All HOME/HTF project activities must be completed as identified in the grantee's implementation schedule and the executed HOME/HTF contract. Commerce, in its sole discretion, may extend the project completion deadline if the project is near completion and the grant recipient can demonstrate a good faith effort to complete the project on time and within budget.

3.3 Firm Commitment of Other Funding Sources

Tools and Resources:

- ✓ *Guidelines on Providing Acceptable Documentation of Non-HOME/-HTF Funding Sources*

Grantees must provide adequate documentation of the firm commitment of all non-HOME/-HTF funds for the project identified in the preliminary project budget submitted in the grant recipient's application.

If HOME/HTF grant recipients change one of their funding sources after executing a contract with Commerce, or if the cost of the project increases substantially after obtaining firm commitment of non-HOME/-HTF funds and additional funding is required from existing or new sources, the grantee should notify Commerce promptly. Commerce will underwrite the project with the updated financial information, particularly if the debt structure is changed. Commerce may, at its sole discretion, suspend distribution of HOME/HTF funds until there is once again a firm commitment of all funds needed for the project.

3.4 Project Management Plan

Tools and Resources:

- ✓ *Sample Project Management Plan*
- ✓ *Sample Subrecipient Agreement*

All HOME/HTF grant recipients must prepare and submit a signed management plan. The management plan must establish how the grantee will allocate responsibility for complying with HOME/HTF grant and State requirements, including but not limited to the proper financial management of HOME/HTF funds, review of contracts and requests for reimbursement, compliance with labor standards and other federal and state requirements, and completion of environmental review. In all cases, grantees must maintain effective control over and accountability for all funds.

In the management plan, grantees may designate an existing or new employee as the HOME/HTF grant manager; hire a consultant to manage the grant through applicable competitive procedures for procurement of services; or contract with another entity, to manage the grant. If a grantee will work with another governmental entity or nonprofit organization to manage its HOME/HTF grant, the grantee must execute an agreement establishing the responsibilities and duties between the two agencies. Prior to execution, all contracts and agreements, including those for grant administration services, must be submitted to Commerce for review.

3.5 Environmental Review

Tools and Resources:

HOME:

- ✓ *Sample Letter and Resolution Designating Environmental Certifying Official*
- ✓ *Part 58 Environmental Review Process and Resources*
- ✓ [*HUD Resources for Complying with Related Laws and Authorities \(Part 58\)*](#)⁸
- ✓ *Agency Contacts for Environmental Information and Notification Distribution*
- ✓ [*HUD Form – Environmental Review for Activity/Project that is Categorically Excluded Subject to Section 58.5*](#)⁹

⁸ <https://www.hudexchange.info/programs/environmental-review/federal-related-laws-and-authorities/>

⁹ <https://www.hudexchange.info/resource/3139/part-58-environmental-review-cest-format/>

- ✓ [HUD Form – Part 58 Environmental Assessment \(EA\)](#)¹⁰
- ✓ *Sample Tribal Consultation Letter*
- ✓ *Sample State Historic Preservation Office Letter*
- ✓ *Sample Letter and Resolution Showing Agreement by Local Government to Prepare Environmental Review on Behalf of a Non-Government Entity*

HTF:

- ✓ [Suggested Format: New Construction – HTF Funds Only](#)¹¹
- ✓ [Suggested Format: Rehabilitation – HTF Funds Only](#)¹²
- ✓ [Suggested Format: New Construction – HTF and Other HUD Funds](#)¹³
- ✓ [Suggested Format: Rehabilitation – HTF and Other HUD Funds](#)¹⁴
- ✓ *Sample Environmental Certification*

HOME grants are subject to the National Environmental Policy Act (NEPA) of 1969 and regulations at 24 CFR 58 while HTF grants are exempt from NEPA and 24 CFR 58 but subject to substantially equal regulations at 24 CFR 93.301. The difference between HOME and HTF’s regulatory approaches is largely administrative. HTF is not subject to publication requirements under 24 CFR 93.301 (although public participation is necessary to comply with state law), and HTF does not require a formal release of funds, but rather an authorization to request reimbursement. Additionally, both HOME and HTF grants are subject to the Montana Environmental Policy Act (MEPA) of 1971. A brief discussion of NEPA and MEPA are provided below.

NEPA establishes national policies and procedures for protecting and enhancing environmental quality. Under NEPA, HOME grant recipients are responsible for analyzing the potential environmental impact of a proposed project and making a formal determination regarding its probable impact. Under federal regulations, Commerce cannot release funds for a HOME project until the grant recipient has certified that a review of the project activities demonstrates that no significant impact on the human environment is likely to occur or that actions have been initiated that would mitigate any potential impacts to an extent practicable.

MEPA, which is modeled after NEPA, seeks to avoid adverse impacts on the natural and human environment by mandating careful consideration of the potential impacts of any development activity assisted with state funds or approved by a state agency. Under MEPA, Commerce is responsible for analyzing the potential environmental impact of a proposed project and making a formal determination regarding its probable impact before authorizing it to begin. Thus, Commerce cannot authorize the use of funds for HOME/HTF projects until it has determined that the project will not have a significant impact on the quality of the human environment. MEPA specifies three different levels of environmental review, based on the significance of potential impacts. The levels are: (1) exempt or excluded from MEPA review; (2) environmental assessment (EA), and (3) environmental impact statement (EIS). For

¹⁰ <https://www.hudexchange.info/resource/3140/part-58-environmental-assessment-form/>

¹¹ <https://www.hudexchange.info/resource/5143/suggested-format-for-determining-compliance-with-environmental-provisions-24-cfr--93301f1-new-construction--htf-funds-only/>

¹² <https://www.hudexchange.info/resource/5144/suggested-format-for-determining-compliance-with-environmental-provisions-for-24-cfr-93301f2-rehabilitation-htf-funds-only/>

¹³ <https://www.hudexchange.info/resource/5145/suggested-format-for-determining-compliance-with-environmental-provisions-24-cfr--93301f1-new-construction--htf-and-other-hud-funds/>

¹⁴ <https://www.hudexchange.info/resource/5146/suggested-format-for-determining-compliance-with-environmental-provisions-for-24-cfr--93301f2-rehabilitation--htf-and-other-hud-funds/>

more information on MEPA, see *A Guide to the Montana Environmental Policy Act* at <https://leg.mt.gov/content/Publications/Environmental/2013-mepa-handbook.pdf>.

HOME projects, which require an environmental review based on 24 CFR Parts 50 and 58, meet MEPA requirements. Likewise, projects that combine HOME and HTF funding meet MEPA requirements. Projects assisted with HTF funds only typically do not meet MEPA requirements; therefore, in addition to complying with the regulations at 24 CFR 93.301, HTF grantees must undertake a public participation process as outlined below under HTF environmental guidance ([HTF Public Hearing](#)).

At the time of application to Commerce, an environmental review process is initiated via the environmental checklist included in the Uniform Application. Completion of the environmental checklist is intended to ensure HOME/HTF applicants adequately consider and, if possible, avoid potential impacts while the project is being planned. After award, grantees continue their environmental review according to requirements set forth by each program.

HOME

The environmental review under HOME follows the following outline:

1. Receive authorization from Commerce to incur costs for environmentally exempt activities
2. Pass resolution designating the environmental certifying official (ECO) (not required when the ECO is the chief elected official)
3. Send initial notification letters to applicable agencies and authorities
4. Make an environmental finding (A, B, C, D, or E)
5. Complete the appropriate steps to compile the environmental review record (ERR) and comply with public participation requirements

1. Receive authorization from Commerce to incur costs for environmentally exempt activities

Upon grant award, grant recipients receive authorization from Commerce to incur costs for “environmentally exempt” activities. Reimbursement of all incurred costs are contingent upon the grantee’s completion of the environmental review, Commerce’s or HUDS’s (as applicable) release of funds, an executed contract between Commerce and the grantee, and the grantee’s fulfillment of special contract conditions (if applicable).

Prior to receiving authorization to incur non-environmentally exempt costs, grant recipients are prohibited from undertaking, committing, or expending any funds (including non-federal) to physical or choice-limiting actions on the project site. Physical and choice-limiting actions include, but are not limited to, property acquisition, demolition, movement, rehabilitation, conversion, repair, and construction.

2. Pass resolution designating the environmental certifying official (ECO) (not required when the ECO is the chief elected official)

For grants awarded to local governments, grant recipients must adopt a resolution designating an environmental certifying official or “ECO” (Note: the only time a resolution is not necessary is when the ECO is the chief elected official). The ECO is responsible for the environmental review process and record; may be the chief elected official, another official, or staff of the grantee; and should be capable of defending any information, conclusions, and determinations provided as part of the environmental review. For purposes of federal law, the designated ECO will be considered a federal official and will represent the grantee in any legal challenge to the local government’s compliance with environmental

requirements. For grants awarded to nonprofit developers, public housing authorities, and CHDOs, the Director of Commerce will be the ECO, and Commerce will be responsible for the environmental review process and record, which HUD will ultimately review and approve. In cases where Commerce is responsible for conducting the environmental review, the grant recipient is responsible for cooperating with Commerce and providing information necessary for Commerce to fulfill its responsibilities. In situations where Commerce is the responsible entity, the environmental review process may take additional time to allow for an in-depth review and the required review period from HUD.

3. Send initial notification letters to applicable agencies and authorities

The grant recipient is advised to send initial notification letters detailing project scope and footprint to applicable local, state, and federal agencies, as well as tribal authorities and others as necessary. Early notification (i.e., prior to an official NOI/RROF¹⁵ or FONSI/NOI/RROF¹⁶) ensures issues and delays aren't encountered further along in the environmental process. Notification letters should briefly describe project activities that will occur and delineate the site of the project (site map). A distribution list is available on Commerce's website under Tools and Resources for this manual, a list of tribes with area-specific interests and contact information is available at <https://egis.hud.gov/tdat/>, and contact information for local offices of the Natural Resources Conservation Service, which oversee the area sage grouse initiative, is available at <https://www.nrcs.usda.gov/wps/portal/nrcs/mt/contact/local/>. Grantees should retain all communication with applicable agencies for inclusion in the Environmental Review Record (ERR).

As part of their initial notification process, grant recipients must formally request comments from the Montana State Historic Preservation Office (SHPO) regarding possible historical impacts. A model letter is available on Commerce's website under Tools and Resources for this manual. A copy of the response received from SHPO must be included in the ERR. The grant recipient must also consider the effect of the project on properties included in or eligible for the National Register of Historic Places. In some instances, prior to the release of funds, the federal Advisory Council on Historic Preservation must be allowed an opportunity to comment.

4. Make an environmental finding (A, B, C, D, or E)

The grant recipient must consider activities that will occur as a result of the project and make an environmental finding that corresponds to project activities. Possible environmental findings are presented in *Part 58 Environmental Review Process and Resources (HOME)* (see Tools and Resources). Note that multi-family and single-family housing development activities covered under this manual will never result in a finding of A or B.

5. Complete the appropriate steps to compile the environmental review record (ERR) and comply with public participation requirements

Upon determining a finding level, the grant recipient must undertake environmental review, take applicable next steps, and maintain the ERR, which should be available for public review in the responsible entity's general offices. The ERR provides evidence of the review process from start to finish and must include a comprehensive project description, detail the pre-existing conditions of the project site and surrounding area, evaluate the effects of the project on the human environment, document compliance with applicable statutes and authorities, record a written determination and review findings

¹⁵ NOI/RROF: Notice of Intent to Request Release of Funds

¹⁶ FONSI/NOI/RROF: Finding of No Significant Impact and Notice of Intent to Request Release of Funds

(e.g., exempt, categorically excluded determinations; finding of no significant impact), and contain verifiable source documents and relevant base data used or cited during the review. Levels of review and corresponding actions and documentation required are outlined in *Part 58 Environmental Review Process and Resources (HOME)* (see Tools and Resources).

Once the ERR is complete, grant recipients whose finding level requires it, must request and receive an environmental release of funds from Commerce or HUD as applicable.

For more information about HUD environmental review compliance with related laws and authorities (Parts 50 and 58), go to <https://www.hudexchange.info/programs/environmental-review/federal-related-laws-and-authorities/>.

HTF

The environmental review under HTF follows the following outline:

1. Receive authorization from Commerce to incur costs for activities that have been preliminarily reviewed for eligibility
2. Begin compiling documentation to address the environmental provisions
3. Prior to construction, hold a public hearing
4. Prior to construction, determine whether the project meets environmental provisions
5. Receive authorization to request reimbursement of funds
6. At project completion, demonstrate that the project meets applicable property standards, including environmental provisions

[1. Receive authorization from Commerce to incur costs for activities that have been preliminarily reviewed for eligibility](#)

Upon grant award, grant recipients receive authorization from Commerce to incur costs for all activities. Reimbursement of incurred costs are contingent upon the grantee's initiation of the environmental review (grantees must submit their pre-construction review documentation to Commerce in order to receive authorization to request reimbursement of funds), an executed contract between Commerce and the grantee, and the grantee's fulfillment of special contract conditions.

[2. Begin compiling documentation to address the environmental provisions](#)

Grantees should begin compiling their environmental documents as early as possible so that compliance with HTF environmental provisions can be determined and authorization to request reimbursement of funds can be received. To determine compliance with HTF environmental provisions, grant recipients are encouraged to utilize HUD's suggested format applicable for their project. The suggested format can be used as a cover sheet for the supporting documentation that must be included as part of the grantee's compliance with HTF environmental provisions. The suggested format forms, along with additional information and resources, are available online at <https://www.hudexchange.info/programs/environmental-review/htf/>.

[3. Prior to construction, hold a public hearing](#)

Although HTF funding does not require a public noticing and comment process under NEPA and 24 CFR Parts 50 and 58, HTF projects are required to include a public participation component to comply with MEPA. Pursuant to MEPA, HTF grantees must provide documentation of the completed environmental review process including public notice for and minutes of a public hearing at which the environmental review was discussed, the public comments received, and the final decision on the environmental

determination made during the hearing. (Note: Public hearings are not required when HTF funding is combined with other sources, such as HOME, that are subject to NEPA. When other funding in an HTF-assisted project triggers NEPA, the public noticing and comment process under Parts 50 and 58 should be followed.)

4. Prior to construction, determine whether the project will meet environmental provisions

Per regulation, HTF projects must meet applicable property standards, including environmental provisions, at project completion. However, it should be determined prior to construction whether a project will meet the HTF environmental provisions. If a project cannot meet HTF environmental provisions at project completion, it is ineligible for HTF funding and grant funds would have to be withheld if not yet disbursed or repaid if already disbursed. For example, if a project will impact a wetland, it cannot be funded by HTF.

5. Receive authorization to request reimbursement of funds

Once a grant recipient has compiled its preliminary (i.e., pre-construction) review of environmental provisions, it must submit its documentation to Commerce for review. Upon review, Commerce will authorize the grantee to request reimbursement for incurred costs. During construction, grantees must ensure that Commerce is apprised of unanticipated environmental issues that arise. In some cases, mitigation (e.g., for lead-based paint, noise, or asbestos) may be required.

6. At project completion, demonstrate that the project meets applicable property standards, including environmental provisions

As noted above, HTF projects must meet applicable property standards, including environmental provisions, at project completion. Before grant closeout, grant recipients will certify that their project complies with all applicable property standards including environmental provisions. Additionally, grant recipients will submit their completed certification of compliance, which will document consultation, mitigation (if applicable), and final certification by qualified professionals.

The grantee's certification should be signed by their highest-ranking executive (e.g., executive director) and include the following statement: *The completed project is wholly in compliance with the Housing Trust Fund environmental provisions as outlined in 24 CFR 93.301; and all items needing certifications and mitigation have been completed and comply with the provisions. Provisions that could not be satisfied prior to construction have been met; specifically, with regard to safe drinking water, the project only uses lead-free pipes, solder, and flux.*

Additionally, final certification by qualified professionals is required and must include a signed statement from the architect confirming that lead pipes, solder, and flux were not used in the construction of the project.

A sample environmental certification meeting the requirements outlined above is provided under Tools and Resources.

3.6 Civil Rights

Tools and Resources:

- ✓ *Sample Fair Housing Policy Resolution*
- ✓ [*Fair Housing Poster \(Form HUD-928.1\)*](#)¹⁷
- ✓ *Sample Complaint Procedure Resolution and Complaint Form (ADA and Section 504)*
- ✓ *Sample Equal Employment Opportunity (EEO) Policy*
- ✓ [*Equal Employment Opportunity \(EEO\) Poster*](#)¹⁸

At project start-up, grant recipients must demonstrate their commitment to ensuring accessibility (both structurally and administratively) to programs, services, and benefits for persons with disabilities.

Civil rights responsibilities at the beginning of a project include the following:

- Undertaking actions to affirmatively further fair housing (adopt a fair housing resolution as applicable, post fair housing notices and posters, publicize affirmative fair housing rights and responsibilities)
- Adopting complaint resolution procedures pursuant to the Americans with Disabilities Act or “ADA” and Section 504
- Completing an ADA Self-Evaluation Inventory as applicable
- Adopting Equal Employment Opportunity (EEO) policies and posting EEO posters in offices and/or at project
- Adopting a Hatch Act resolution

Documentation needed to demonstrate compliance with civil rights requirements is outlined in Commerce’s *Start-Up Requirements Checklist* (see Tools and Resources).

3.7 Establish Financial Accounting System

Tools and Resources:

- ✓ *Electronic Funds Transfer (EFT) Sign Up Form*
- ✓ *Signature Certification Form*

Local government grantees must comply with applicable auditing and reporting requirements set forth in 2 CFR 200; Section 2-7-503, Montana Code Annotated (MCA), as provided for in Section 20-9-213, MCA; and OMB Circular A-133. All grantees must demonstrate that they have an established financial accounting system in place that conforms to generally accepted accounting principles (GAAP).

The grant recipient will need to designate the officials authorized to sign requests for payment of HOME/HTF funds and designate a depository (bank) to receive HOME/HTF funds when they are disbursed by Commerce to the grantee. Commerce’s *Signature Certification Form* and *Electronic Funds Transfer (EFT) Sign Up Form* are used for these purposes (see Tools and Resources).

¹⁷ https://www.hud.gov/sites/documents/FAIR_HOUSING_POSTER_ENG.PDF

¹⁸ <https://www.eeoc.gov/employers/eo-law-poster>

3.8 Contract

Tools and Resources:

- ✓ *Project Set Up and Completion Report – Multifamily Development*
- ✓ *Project Set Up and Completion Report – Single-Family Development*

The executed contract between the grantee and Commerce is the legal document that governs the administration of the grant and will identify the following:

- The total amount of HOME/HTF funds to be provided;
- The scope of work, including the number and bedroom size of assisted units;
- The initial rent structure, as applicable;
- A preliminary project budget for the use of HOME/HTF funds and any other funds involved in the project;
- The implementation schedule for the project;
- Any special conditions placed on the grant; and
- The general terms and conditions associated with the grant, including the period of affordability.

Regulatory contract requirements are outlined at 24 CFR 92.504 for HOME and 24 CFR 93.404 for HTF.

The process of executing the contract will include updating the project budget and implementation schedule, designating officials authorized to sign requests for payment of HOME/HTF funds, designating a depository (bank) to receive HOME/HTF funds, and incorporating the scope of work to be completed by the grantee. The grantee's application for HOME/HTF funds, as approved by Commerce, is incorporated by reference into the contract and the representations made therein are binding upon the grantee.

Once ready to execute a contract, Commerce will contact the grantee to confirm grantee authorized representatives for signatures. The contract will be reviewed by Commerce and then transmitted to the grantee's authorized representatives through an electronic process for signatures. A copy of the final, executed contract will be available electronically when all signatures have been obtained.

Project set up coordination will commence upon execution of the contract. This process requires grantees to provide information via Commerce's *Project Set Up and Completion Report* (see Tools and Resources); Commerce then enters project information into IDIS, which allows the project to be funded and accomplishments to be reported.

4. Project Management

Each grantee is required to comply with all applicable local, state, and federal laws and regulations throughout its project. This includes adherence to all applicable design standards, environmental mitigation requirements, building codes, and zoning ordinances. A copy of all applicable permits that are obtained for the project must be submitted to Commerce prior to commencing construction activities.

HOME/HTF projects must have construction activities completed as identified in the project's implementation schedule and the executed contract with Commerce. Commerce, in its sole discretion, may grant an extension if the project is near completion, and the grant recipient can demonstrate a good faith effort to complete the project on time and within the original budget.

4.1 Records Creation and Retention

Tools and Resources:

- ✓ *Suggested Record Organization*

Grantees must create and maintain all records of project activities funded with HOME/HTF funds, including but not limited to financial records, supporting documents, and such other records as are required by law or other authority, for 5 years after either the completion of the project's POA or the conclusion of any claim, litigation, or exception relating to the project taken by the State or any third party, whichever is later. Grantees must provide HUD, Commerce, the Legislative Auditor, or their agents access to all project records upon request.

Accounting and Auditing Requirements

Grantees must maintain all receipts for expenditures of HOME/HTF funds in accordance with GAAP. Grantees that are local governments must comply with the applicable auditing requirements of 2 CFR 200; Section 2-7-503, MCA, as provided for in Section 20-9-213, MCA; and OMB Circular A-133.

4.2 Uniform Relocation Act (URA)

Tools and Resources (forthcoming)

All federally funded projects, including HOME and HTF, fall under requirements of the Uniform Relocation and Real Property Acquisition Policies Act of 1970 (commonly referred to as the "Uniform Relocation Act" or URA), which provides fair and consistent treatment for the purchase or transfer of real property (acquisition), as well as provides uniform, fair, and equitable treatment to persons (defined as families, individuals, businesses, nonprofit organizations, and farms) who must relocate as a result of acquisition, demolition, or rehabilitation. While permanent displacement is expected to be rare, rehabilitation of occupied properties often results in residents being temporarily relocated within or from the property. For acquisition, the objectives of the URA are accomplished through notifying sellers of the property's market value and the voluntary nature of the transaction. For rehabilitation of occupied properties, the objectives of the URA are accomplished through temporary relocation notices (e.g., General Information Notices or "GIN"), advisory services, and payments, as applicable. Specific URA requirements are based on whether an acquisition is involuntary or voluntary and whether displacement is temporary or permanent. In most cases, acquisition is voluntary and residents are considered temporarily relocated rather than permanently displaced.

Section 104(d) of the Housing and Community Development Act of 1974 (also known as the Barney Frank Amendments) may also apply when projects are HOME funded and involve demolition or conversion of residential units. The intent of Section 104(d) is to (1) ensure that certain HUD programs do not reduce the number of affordable housing units by requiring one-for-one replacement of demolished or converted affordable housing units and (2) provide special relocation assistance to lower income tenants displaced by certain HUD projects. To comply with Section 104(d), grantees must follow an approved Residential Anti-Displacement and Relocation Assistance Plan (RARAP), which is included in Commerce’s application toolkit available online at

[https://housing.mt.gov/ shared/HTF/docs/Relocation-Plan-RARAP.docx](https://housing.mt.gov/shared/HTF/docs/Relocation-Plan-RARAP.docx).

Prior to submitting an application for HOME/HTF funds, prospective grantees should consult application guidelines, which detail how to comply with the URA and Section 104(d), as applicable. Once awarded, grantees must ensure their project-specific RARAP is current and outlines the method by which the grantee will (if applicable) track tenant turnover ensuring all tenants receive GINs as they move in, track tenant reasons for moving out, and document the process used to temporarily relocate tenants during rehabilitation activities. Grantees are encouraged to become familiar with the tools and resources outlined in this manual and to work closely with Commerce staff to ensure compliance.

For more information about URA and requirements triggered by specific project activities, see *HUD Handbook 1378: Tenant Assistance, Relocation and Real Property Acquisition* available online at <https://www.hudexchange.info/resource/310/hud-handbook-1378-tenant-assistance-relocation-and-real-property-acquisition/>. Applicable HUD forms are available in English and other languages online at https://www.hud.gov/program_offices/administration/hudclips/forms.

4.3 Procurement Procedures

Tools and Resources:

- ✓ *Procurement Checklist (forthcoming)*
- ✓ *Sample Request for Proposals (RFP) for Project Management Services*
- ✓ *Sample Request for Qualifications (RFQ) for Architectural Services*
- ✓ *HOME Supplemental Conditions (forthcoming)*
- ✓ *HTF Supplemental Conditions*
- ✓ *Step-by-Step Guide to Procurement by Sealed Bid*
- ✓ *Step-by-Step Guide to Procurement by Competitive Request*
- ✓ *Sample Professional Services Contract (forthcoming)*
- ✓ *Sample of a Consultant’s Invoice Meeting Commerce’s Requirements*

All HOME/HTF projects must follow applicable local, state, and federal procurement requirements (namely, 2 CFR Part 200 and Title 7, Chapter 5, Parts 23 and 43, MCA) for the procurement of all goods and services, even when goods and services are paid with non-HOME/-HTF funds. Grantees are encouraged to follow the procurement guidelines described herein; however, Commerce may allow some flexibility upon request.

Requirements for publication of notices for municipalities are set forth in Section 7-1-4127, MCA. Requirements for publication of notices for counties are set forth in Section 7-1-2121, MCA. Grant recipients that are local governments should be aware that Section 18-8-203, MCA—dealing with the procurement of architectural, engineering, and land surveying services—states that units of state and local government must publish a notice of their need for these services. However, because Section 18-8-

203, MCA, does not establish a specific timeframe or method of publication, it can be read in conjunction with Sections 7-1-4127 and 7-1-2121, MCA, for further guidance regarding publication timeframes.

General Requirements

Commerce Review

Grantees are encouraged to submit their solicitations to Commerce for review before publishing. This review allows Commerce to provide grantees with technical assistance, and ensures grantees have full opportunity to consider all applicable procurement requirements and best practices.

Disadvantaged Business Enterprise, Minority Business Enterprise, and Women Business Enterprise (DBE/MBE/WBE) Solicitation

Grantees receiving assistance for covered projects must proactively reach out to disadvantaged, small, minority, and women business enterprises when soliciting goods and services. Grantees can access the disadvantaged business enterprise directory or request quotes from certified disadvantaged business enterprises by accessing the Montana Department of Transportation's online tools at <https://www.mdt.mt.gov/business/contracting/civil/dbe.shtml>. Additionally, grantees must notify the public of resources available to targeted enterprises and opportunities for contracting arising in connection with covered projects. Copies of direct solicitations and public notice must be maintained in project files. See the Section 3 and Disadvantaged Business Enterprise / Minority Business Enterprise / Women Business Enterprise (DBE/MBE/WBE) Toolkit available at <https://comdev.mt.gov/Resources> for more information.

Section 3 Business Concern Solicitation

Grantees must, to the extent feasible, ensure that economic opportunities are extended to Section 3 workers (i.e., workers who are low- or very-low income, employees of Section 3 business concerns, or participants of YouthBuild). Grantees receiving assistance for covered projects must proactively reach out to Section 3 workers and Section 3 business concerns when providing employment and training opportunities and/or when soliciting goods and services. Grantees should utilize HUD's Opportunity Portal at <https://hudapps.hud.gov/OpportunityPortal/> and Section 3 Business Registry at <https://portalapps.hud.gov/Sec3BusReg/BRegistry/SearchBusiness> to meet outreach requirements. Additionally, grantees must notify the public of resources available to targeted workers and businesses and opportunities for training, employment, and contracting arising in connection with covered projects. Copies of direct solicitations and public notice must be maintained in project files. See the Section 3 and Disadvantaged Business Enterprise / Minority Business Enterprise / Women Business Enterprise (DBE/MBE/WBE) Toolkit available at <https://comdev.mt.gov/Resources> for more information.

Full and Open Competition

All procurement transactions should be conducted in a manner that provides full and open competition. Procurement procedures should avoid any provisions that would restrict or eliminate competition (e.g., unreasonable response deadlines, unreasonable requirements, or unnecessary levels of prior experience). It should be noted that multiple services can be combined in one procurement process to reduce costs and save time so long as the procurement allows for "and/or" language to encourage all types of service providers the ability to respond.

When a grant recipient receives only one response to a competitive solicitation, the procurement process may be reviewed by Commerce to determine whether it was unduly restrictive or tailored to a

particular contractor or supplier. The burden of proof will be on the grantee to demonstrate reasonable efforts were made to assure maximum open and free competition and procurement procedures were followed that did not unnecessarily restrict competition.

Geographic Preference

Grantees cannot apply statutorily or administratively imposed in-state or local geographic preferences in the evaluation of bids or proposals. However, when contracting for architectural and engineering services, geographic location may be a selection criterion if an appropriate number of qualified firms, given the nature and size of the project, exist within the area. Requests for proposals or qualifications that include criteria such as “knowledge of the community” or “experience with the community” would restrict the competition and be unacceptable. Notwithstanding, it should be noted that firms must follow all Montana state licensing laws.

Written Selection Procedures

Grant recipients should have written selection procedures that incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. The description should not contain features that unduly restrict competition. For example, the description should not detail product specifications; however, it may state the qualitative nature of the material, product, or service to be procured, and when necessary, describe those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Written selection procedures should also identify all requirements that the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

Procurement Methods

The following methods of procurement are allowable for HOME and HTF projects.

Micro-Purchase Procedure

Micro-purchase procedures can be used for the acquisition of supplies or services generally no greater than \$3,000. Contact Commerce for additional details.

Small Purchase Procedure

Small purchase procedures can be used for services, supplies, or property when procurement will not cost more than \$100,000 in the aggregate and is relatively simple and informal. As part of this process, grantees must obtain written or oral quotes from at least two qualified sources. The process of obtaining quotes and additional information from sources needs to be documented to demonstrate that proper procedures were followed and that the service, supply, or property was selected appropriately. Documentation should include a record of rates or quotes received from and identifying information for all firms (name, address, and phone), questions asked equally and fairly to all firms, and the rationale for selecting a specific firm. Note: Grantees that are local governments need to advertise when procuring equipment over \$80,000 per 7-5-4302, MCA.

Sealed Bid Procedure

Competitive, sealed bidding is the standard procurement process followed for construction activities in HOME and HTF projects. Bids are publicly solicited (advertised in newspapers) and kept in confidence until a public bid opening. Grantees that are local governments should refer to the current applicable provisions of Montana law for advertising requirements when the competitive, sealed bid method is used (Section 7-5-2301, MCA, for county governments and Section 7-5-4302, MCA, for municipalities).

This method of procurement is used when the following conditions exist:

- A complete, adequate, and realistic specification or purchase description is available;
- Two or more responsible suppliers are willing and able to compete effectively;
- The procurement lends itself to a firm, fixed-price contract (i.e., a specified amount to be paid when items or services are delivered); and
- Selection of a successful bidder can appropriately be made principally based on price (i.e., award goes to the lowest responsive and responsible bidder).

See Tools and Resources for a step-by-step guide to procuring by sealed bid.

Competitive Request for Proposal (RFP) Procedure

Requests for Proposals (RFPs) are required for procurement over \$100,000 and are recommended for procurement under \$100,000 given complexities and/or challenges obtaining quotes. This method of procurement is generally used when conditions are not appropriate for the use of sealed bids. Awards are made to responsive and responsible firms with the most advantageous proposal, primarily on the basis of qualifications and not on the basis of cost.

See Tools and Resources for a step-by-step guide to procurement by competitive request.

Competitive Request for Qualifications (RFQ) Procedure

When procuring professional services such as architectural, engineering, or surveying services with estimated fees over \$50,000, Requests for Qualifications (RFQs) are required (Section 18-8-212, MCA). This method of procurement is generally used when conditions are not appropriate for the use of sealed bids but a fixed-price or cost-reimbursement contract is desired. Awards are made to responsive and responsible firms with the most advantageous proposal, with price and other factors considered.

See Tools and Resources for a step-by-step guide to procurement by competitive request.

Non-Competitive or Sole Source Procedure

Sole source procurement (also known as “procurement by noncompetitive proposals”) involves soliciting only one source or, after soliciting several sources, determining competition is inadequate. This type of procurement will rarely be authorized.

This method of procurement requires prior approval by Commerce and is only allowed when at least one of the following conditions exists:

- Sole source procurement is permissible under Montana law;
- The items or services required are available only from one source;
- A public emergency exists such that urgency will not permit a delay beyond the time needed to employ one of the other authorized procurement methods; or
- After solicitation from several sources, competition is determined to be inadequate.

Prior to conducting Sole Source procurement, contact Commerce for instructions.

Contract Preparation

For HOME projects, an environmental ROF must be obtained before contract execution, and all grantees must demonstrate to Commerce that they followed proper procurement procedures before entering

into agreements. Additionally, grantees must provide Commerce with information for prospective contractors (i.e., names, addresses, DUNS numbers) so Commerce can ensure that contractors are eligible to receive federal awards. To verify that contractors are registered to do business with the federal government and do not have an active exclusion, Commerce references the System for Award Management (SAM) at <https://sam.gov>. To verify state eligibility, Commerce also checks the State of Montana Debarred Vendors list at <http://emacs.mt.gov/DebarredSuspendedVendors> and/or consults directly with the Montana Department of Labor & Industry.

When preparing project contracts, grantees must ensure inclusion of HOME/HTF supplemental conditions. All contracts must include the scope of services (detailed description of services to be performed and/or products to be provided), timetable, contract cost, and payment terms negotiated by the grantee and the consultant.

Contracts should allow fair and reasonable profits for consultants. Payments to consultants must be based on either fixed price or cost reimbursement, rather than cost plus percentage of cost or percentage of construction cost. Payment terms for management services contracts can provide for the retainage of a percentage of contract funds (typically about 5%) pending completion of conditional project closeout and the resolution of any monitoring findings which may be related to the contractor's performance. Payment terms for architectural contracts can allow for retainage by holding back some funds until a building has been inspected and approved for building code compliance.

All project contracts must be submitted to Commerce for review prior to execution.

Contract Extension

If grantees wish to extend a contract with a consultant, architect, or engineer procured to prepare their HOME or HTF application, they must be able to clearly document that their original procurement process met all applicable requirements and included a scope of services that could extend beyond grant writing at the grantee's discretion. Professional services provided for a longer period than originally procured must be re-advertised.

Documentation

Grantees should be prepared to provide information to Commerce about how they intend to procure or procured grant administration, professional services, and construction services in accordance with the procurement laws applicable to them. Documentation should demonstrate the grantee's rationale for choosing a specific method of procurement, procurement procedures followed including vendors solicited and advertisements/requests (if applicable), responses received including consultant qualifications, basis for consultant selection or rejection, consultant eligibility (non-debarment and non-exclusion), basis for contract price, and contract specifications and scope of work. The grantee's records must show their efforts to solicit an adequate number of qualified sources, undergo special outreach (Section 3 and DBE/MBE/WBE, as applicable), and provide for full and open competition. For HOME projects, an environmental ROF dated prior to contract execution must also be documented.

Once executed, all project contracts must be submitted to Commerce.

Ongoing Review of Contractor Performance

The grant recipient should establish and maintain procedures to monitor contractor performance to ensure adherence to the scope of services, timetable, and any other terms and conditions specified in

the contract. Ongoing review of the contractor's performance and progress will prevent problems that may affect the quality, timely completion, or cost of the contract for the project.

4.4 Construction

Tools and Resources:

- ✓ *Pre-Construction Conference Planning Guide (forthcoming)*
- ✓ *Pre-Construction Conference Attendance and Materials Receipt Verification Form*
- ✓ [*Equal Employment Opportunity \(EEO\) Poster*](#)¹⁹ **Must be posted at construction site**
- ✓ [*OSHA Job Safety and Health Poster*](#)²⁰ **Must be posted at construction site**
- ✓ [*SAM Quick Start Guide for New Grantee Registration*](#)²¹
- ✓ *Volunteer Certification Form*

HOME:

- ✓ *Labor Standards Resources*

Construction Site Visit and Project Completion Monitoring

Grant recipients are responsible for administering their HOME/HTF projects in accordance with all applicable local, state, and federal laws. Commerce has the responsibility to assist and support grantees in successfully implementing their project activities and complying with all applicable requirements from start-up through completion. To this end, in addition to reviewing information submitted with progress reports and requests for reimbursement, at its discretion, Commerce will complete a site visit during the construction phase of the project to verify activities are underway. Additionally, Commerce will conduct a project completion monitoring visit after construction is complete. Project completion monitoring, which occurs prior to occupancy, involves a visit to the grantee's offices and to the project site to review records, inspect project activities, complete a UPCS inspection, and meet with the local officials. Commerce will contact the grantee concerning the timing and scope of the project completion monitoring visit. After monitoring, Commerce will provide written monitoring comments to the grantee. Commerce will advise the grantee of any specific areas of concern and, if necessary, provide the grantee opportunity to take corrective actions to address concerns. (See Section 4.10, [Project Completion](#), for more information.)

Labor Standards (Davis Bacon Wage Rates)

HOME-funded projects with 12 or more HOME-assisted units are subject to federal labor standards including Davis-Bacon Act requirements; HTF-funded projects are not subject to federal labor standards unless triggered by the requirements of another source of funds in the project.

Grant recipients with projects subject to federal labor standards must comply with requirements set forth in the following:

- Davis-Bacon and Related Acts (40 U.S.C. 276 to A-7) as supplemented by U.S. Department of Labor regulations available online at <https://www.dol.gov/whd/govcontracts/dbra.htm>;
- Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by U.S. Department of Labor regulations available online at <https://www.dol.gov/whd/govcontracts/cwhssa.htm>; and

¹⁹ <https://www.eeoc.gov/employers/eo-law-poster>

²⁰ <https://www.osha.gov/sites/default/files/publications/osha3165.pdf>

²¹ https://www.transportation.gov/sites/dot.gov/files/2021-04/SAM_Quick_Guide_for_Grants_Registrations.pdf

- Copeland “Anti-Kickback” Act (18 U.S.C. 874) as supplemented by Department of Labor regulations available online at <https://www.dol.gov/whd/regs/statutes/copeland.htm>.

If Davis-Bacon applies to a project, grant recipients must do the following before commencing construction:

- Designate a labor standards officer
- Request and obtain current wage determinations approved by Commerce (no fewer than 15 workdays prior to going to bid)
- Ensure construction bid documents, contracts, and subcontracts contain applicable federal labor standards provisions (e.g., Form HUD 4010)
- Verify all bidders are eligible to receive federal funds for work performed
- Conduct a pre-construction (“pre-con”) conference to inform all contractors and subcontractors of their labor standards obligations; document contractor’s attendance and receipt of required program materials

Note: A contract must be awarded within 90 days of bid opening, and construction must begin within 90 days of an executed construction contract; otherwise, wage determinations must be updated to include modifications, if any.

During construction, the designated labor standards officer will conduct interviews of the selected construction contractors’ employees and check that labor standards posters and wage determinations are posted and accessible at the project site. (The contractor or subcontractor will be required to allow access to the site and workers for the purpose of completing interviews.) The officer will also review payrolls weekly for correctness and maintain records documenting weekly reviews. Furthermore, the officer will resolve any labor standards violations promptly and maintain a detailed record of all administrative and enforcement activities with respect to labor standards.

For more information about federal labor standards requirements, see *HUD Handbook 1344.1, Federal Labor Standards Compliance in Housing and Community Development Programs* available online at <https://www.hudexchange.info/resource/2511/hud-handbook-13441-federal-labor-standards-compliance/>.

Montana’s State Prevailing Wage Rates apply for public contracts where Commerce’s grantee is a local government, which will own, operate, and manage a public facility. For more information, contact Commerce or visit <http://erd.dli.mt.gov/labor-standards/state-prevailing-wage-rates>.

4.5 Financial Management

Tools and Resources:

- ✓ *Budgetary Authority Resolution (Local Governments Only)*
- ✓ *HOME/HTF Request for Reimbursement Form *Required for reimbursement**
- ✓ *Uniform Status of Funds Form *Required for reimbursement**
- ✓ *Uniform Invoice Tracking Form *Required for reimbursement**
- ✓ *Project Progress Report *Required for reimbursement**
- ✓ *Contract and Employment Reporting Form²² *Required for reimbursement**

²² See the Section 3 and DBE/MBE/WBE Toolkit at <https://comdev.mt.gov/Resources/>.

HOME:

✓ *Labor Standards Resources *If applicable, documentation required for reimbursement**

Under Montana law, local governments are required to appropriate, by resolution, all HOME/HTF funds received, regardless of the time the funds are received. The resolution should state the source of the funds, the program in which they will be expended, and the effective date of the appropriation (Section 7-6-4006, MCA).

Requests for Reimbursement

Grantees must request reimbursement for eligible, budgeted project expenses using the *HOME/HTF Request for Reimbursement Form* (see Tools and Resources). All requests for reimbursement must be for actual, incurred costs that are adequately and sufficiently documented. For work performed by grantee employees, timesheets or other summary payroll records that detail employee name and title, time period, activities performed, and total amount are acceptable. Itemized invoices for the contractor, any subcontractors, consultants, and vendors or suppliers typically constitute adequate and sufficient documentation provided they include:

- A description of the work performed;
- The number of hours worked to accomplish each item;
- The amount billed for each item;
- Work performed date(s) and work items completed;
- Beginning and ending billing period dates;
- A description of any other eligible expenses incurred during the billing period; and
- The total amount billed.

American Institute of Architects (AIA) pay application forms provide acceptable documentation for construction draws.

Lump-sum contracts typically do not provide for adequate and sufficient documentation, and they are not allowed for design and construction services. Additionally, cost plus a percent to complete methods of compensation are not allowed.

If budget modifications are found to be necessary while preparing a request for reimbursement, Commerce should be notified of the modification prior to the request being submitted. The grantee must approve the changes of tracking or recording of payment for previously paid invoices.

Commerce will retain 2% of the total authorized HOME/HTF grant amount until the project has been completed (certificate of substantial completion) and the project completion report and other necessary documentation has been submitted to and approved by Commerce.

See [Section 4.10](#) for documentation required prior to final requests for reimbursement.

Progress Reports

Each request for reimbursement must be accompanied by a project progress report. In the absence of a request for reimbursement regularly submitted, a project progress report should be submitted every 90 days. The progress report provides Commerce with information on the use of funds requested and the progress and status of the project. On the report, grantees must describe the status of all activities in the scope of work, including the percentage complete, costs incurred, funds remaining, projected

completion date, any significant problems encountered, and any necessary modifications to the budget, implementation schedule, and/or scope of work.

Project photos are encouraged to be submitted to Commerce at the beginning of the project and at the completion of the project. Photos should evidence the improvements made during construction and the new or upgraded facilities.

[Uniform Status of Funds Form and Uniform Invoice Tracking Spreadsheet](#)

Each request for reimbursement must also be accompanied by an updated Uniform Status of Funds Form and Uniform Invoice Tracking Spreadsheet. The Uniform Status of Funds Form provides Commerce with updated information on the remaining project budget and the status of all funding sources involved in the project. The Uniform Invoice Tracking Spreadsheet provides Commerce with updated information on all cumulative project invoices received and paid, broken out by funding source.

[Labor Standards \(Davis-Bacon Wage Rates\)](#)

For HOME projects subject to the Davis-Bacon Act, all requests for reimbursement during periods of construction must be accompanied by a record of employee interviews (Form HUD 11), certification of labor compliance, and copies of reviewed weekly payrolls (initialed, annotated, and dated). (See Section 4.4, [Construction](#), for more information and resources.)

[Section 3 and Disadvantaged Business Enterprise, Minority Business Enterprise, and Women Business Enterprise \(DBE/MBE/WBE\)](#)

Each request for reimbursement must be accompanied by Commerce's Contract and Employment Reporting Form, which gathers information required for Section 3 and DBE/MBE/WBE reporting. (See Section 4.7, [Other Requirements](#), for more Section 3 and DBE/MBE/WBE information and resources.)

Program Income and CHDO Proceeds

All income and proceeds resulting from the HOME/HTF investment must be used for HOME/HTF eligible activities as approved by Commerce. Program income is defined as the gross income received by HOME/HTF grantees that is directly generated from the use of HOME/HTF funds (including program income). The following are examples of program income:

- Proceeds from the disposition by sale or long-term lease of real property acquired, rehabilitated, or constructed
- Gross income from the use or rental of real property, owned by the grantee, that was acquired, rehabilitated, or constructed with HOME/HTF funds less costs incidental to generation of the income (Note: Rental income from property owned by entities other than the grantee does not constitute program income.)
- Payments of principal and interest on loans made using HOME funds (e.g., a local government receives a grant, which it loans to a developer, owner, etc.)
- Proceeds from the sale of loans made with HOME/HTF funds
- Proceeds from the sale of obligations secured by loans made with HOME/HTF funds
- Interest earned on program income pending its disposition
- Any interest or return on the investment permitted under 24 CFR 92.205(b) of HOME funds (Note: This does not include recaptured funds, repayments, or CHDO proceeds.)

Any program income or proceeds retained by a grantee must be disbursed by that grantee before additional HOME/HTF funds are requested.

For more information about program income and CHDO proceeds, please refer to the HOME and HTF Rental Operations Manual.

4.6 Project Amendments

During the project, the grantee may need to modify the project budget, implementation schedule, and/or scope of work. When modifications are necessary, the following guidelines should be followed.

Contract

Changes to a project's budget, implementation schedule, and/or scope of work may require an amendment to the HOME/HTF contract executed by Commerce and the grantee.

Budget

Modifications of less than \$5,000 to any one line item of the program portion of the budget can be submitted as part of the grantee's request for reimbursement, and Commerce approval of the request for reimbursement will constitute approval of the modification.

For budget modifications of \$5,000 or more of the program portion of the budget, the grantee must provide a written justification to Commerce that clearly demonstrates the appropriateness and necessity of the modification. Commerce must agree in writing to any significant changes in the budget before such changes may be implemented by the grantee. If such changes are proposed, Commerce has 45 days to review and approve the changes requested.

Budget modifications, including those for non-HOME-/HTF- funding sources made throughout the project should be listed and tracked continuously on funding forms and tracking spreadsheets.

When bids tabs are received for construction, the amount budgeted may be reduced by an amount proportionate to the reduction in the amount required for construction. For example, if the overall savings were 20 percent, the amount to be provided by HOME/HTF for construction activities would be reduced by 20 percent. Any savings would then be added to the contingency line item amount. If there are any savings upon completion of the project, Commerce reserves the right to share proportionately in those savings with all funding sources.

Budgets will be approved with contingency amounts for completion of project activities. Contingency amounts are reserved for use of construction activities and will seldom be transferred to other line items or administrative costs.

Grant recipients may request to use the difference between the final actual project costs and the original grant award to fund additional work that further enhances the project. Grantees should submit a written request to use remaining HOME/HTF funds for additional activities, including full rationale and cost details. Commerce must review and approve additional work prior to commencement, and the decision to allow additional work funded with remaining HOME/HTF funds is strictly at the sole discretion of Commerce.

Implementation Schedule

Grantees may modify the implementation schedule as necessary to reflect the timeline being followed as the project moves forward, so long as the project's completion date as listed in the executed contract

is met. Grantees should submit details regarding any changes to the schedule as part of their next request for reimbursement, and Commerce's approval of the request for reimbursement will constitute approval of the modification.

If grantees seek to extend the completion date of their HOME/HTF project beyond the termination date identified in the executed contract and implementation schedule, they must contact Commerce as soon as possible to request an extension (requests must include full rationale). Projects that encounter delays that push out completion or are not completed by the contract termination date may be required to execute a contract amendment extending the completion date.

Scope of Work

If grantees seek to change any part of their project's scope of work, as identified in the executed contract, they must first provide a written request with justification to Commerce that clearly demonstrates the appropriateness and necessity of the modification. Commerce, in its sole discretion, may grant a modification to the project's scope of work that does not materially alter the ranking priority, intent, or circumstances under which the project was ranked and approved for funding.

4.7 Other Requirements

Tools and Resources:

- ✓ [Equal Employment Opportunity \(EEO\) Poster](#)²³

Nondiscrimination and Equal Employment Opportunity

All contractors and subcontractors performing work on projects are subject to state and federal nondiscrimination and EEO requirements. An EEO poster must be displayed at the work site. The hiring of all persons to perform work on projects must be made on the basis of merit and qualifications, and neither the grantee nor its contractors or subcontractors shall discriminate based on race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin.

Disadvantaged Business Enterprise, Minority Business Enterprise, and Women Business Enterprise (DBE/MBE/WBE)

Grantees must proactively reach out to DBE/MBE/WBE contractors when soliciting goods and services (for more information, see Section 4.3, [Procurement Procedures](#)). Grantees are encouraged to maintain a plan that demonstrates marketing to and solicitation of DBE/MBE/WBE contractors for the construction of the project. See the Section 3 and DBE/MBE/WBE Toolkit available at <https://comdev.mt.gov/Resources> for more information.

Section 3

Grantees must proactively reach out to Section workers and Section 3 business concerns when soliciting goods and services (for more information, see Section 4.3, [Procurement Procedures](#)). Grantees are encouraged to maintain a plan that demonstrates marketing to and solicitation of Section 3 workers and business concerns for the construction of the project. See the Section 3 and DBE/MBE/WBE Toolkit available at <https://comdev.mt.gov/Resources> for more information.

²³ <https://www.eeoc.gov/employers/eo-law-poster>

Excluded Parties

Commerce will not fund projects owned, developed, or sponsored by any individual, corporation, or other entity that is suspended, debarred, or otherwise precluded from receiving federal awards (2 CFR 200.213). Furthermore, the owner may not contract with any other entity (including but not limited to builders/general contractors, property management companies, or other members of the development team) that are suspended, debarred, or otherwise so precluded. Similarly, the general contractor will be required to determine that subcontractors are not so precluded. For information about how Commerce conducts debarment checks, see the discussion on [Contract Preparation](#) under Section 4.3.

Violence Against Women Act (VAWA)

Tools and Resources:

- ✓ [Notice of Occupancy Rights Under VAWA \(Form HUD 5380\)](#)²⁴
- ✓ [Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking, and Alternate Documentation \(Form HUD 5382\)](#)²⁵
- ✓ [Lease Addendum - Violence Against Women and Justice Department Reauthorization Act of 2005 \(Form HUD 91067\)](#)²⁶
- ✓ [Model Emergency Transfer Plan for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking \(Form HUD 5381\)](#)²⁷
- ✓ [Emergency Transfer Request for Certain Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking \(Form HUD 5383\)](#)²⁸
- ✓ *Request for Assistance Identifying Assisted, Available Units for External Emergency Transfers*

The Violence Against Women Reauthorization Act (VAWA) of 2013, which all federal programs are subject to, provides protections to applicants to and residents of HOME/HTF units who are survivors of domestic violence, dating violence, sexual assault, or stalking, regardless of sex, gender identity, or sexual orientation. VAWA—as applied through 24 CFR 5, as well as 24 CFR 92.359 (HOME) and 24 CFR 93.356 (HTF)—prohibits discrimination against persons because of their status as a domestic violence victim. Additionally, VAWA mandates that (1) applicants and residents be made aware of their rights under VAWA, (2) housing providers provide lease bifurcation (division of a lease as a matter of law) so abusers can be removed from units while victims as defined under VAWA can continue residence, and (3) housing providers establish an emergency transfer plan that allows for victims to transfer units (within the project or to another project) without penalty. Pursuant to VAWA, all HOME/HTF rental projects with funds committed on or after December 16, 2016, shall utilize the following as needed:

- HUD Notice of Occupancy Rights Under the Violence Against Women Act (Form HUD 5380)
- HUD Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking, and Alternate Documentation (Form HUD 5382)
- HUD Lease Addendum - Violence Against Women and Justice Department Reauthorization Act of 2005 (Form HUD 91067)
- HUD Model Emergency Transfer Plan for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking (Form HUD 5381)

²⁴ <https://www.hud.gov/sites/documents/5380.docx>

²⁵ <https://www.hud.gov/sites/documents/5382.docx>

²⁶ <https://www.hud.gov/sites/documents/91067.doc>

²⁷ <https://www.hud.gov/sites/documents/5381.docx>

²⁸ <https://www.hud.gov/sites/documents/5383.docx>

- HUD Emergency Transfer Request for Certain Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking (Form HUD 5383)

All HUD forms are available in English and other languages online at https://www.hud.gov/program_offices/administration/hudclips/forms.

Note: Although these forms have expired, new versions in process under the Paperwork Reduction Act have not yet been made available. Until new forms are published by HUD, these forms should be used.

4.8 Restrictive Covenants

The grantee must submit documentation of enforcement of period of affordability requirements by either deed restriction, a covenant running with the land, use restriction, or other mechanism approved by Commerce before Commerce will disburse HOME or HTF funds. If a project receives both HOME and HTF funding, separate covenants will be recorded.

4.9 Marketing and Leasing

Tools and Resources:

- ✓ [Multifamily Housing AFHMP \(Form HUD Form HUD 935.2A\)](#)²⁹
- ✓ [Single Family Housing AFHMP \(Form HUD 935.2B\)](#)³⁰
- ✓ *Sample Tenant Selection Policy (forthcoming)*
- ✓ *Sample Application for Rental Housing (forthcoming)*
- ✓ *Sample Lease (forthcoming)*
- ✓ [HOME Lease Addendum](#)³¹
- ✓ [VAWA Lease Addendum \(Form HUD 91067\)](#)³²

Affirmative Fair Housing Marketing Plan (AFHMP)

All HOME-/HTF-funded projects with five or more assisted units must establish an Affirmative Fair Housing Marketing Plan (AFHMP) detailing marketing procedures to attract eligible occupants without regard to race, color, national origin, sex, religion, familial status, disability, or sexual orientation. The AFHMP shall include all required aspects as stated in 24 CFR 92.351(a)(2) for HOME and 24 CFR 93.350 for HTF. Commerce will accept AFHMPs using the most recent version of Form HUD 935.2A (multifamily housing) or Form HUD 935.2B (single-family housing), as applicable, or in another format as may be specified by Commerce from time to time.

AFHMPs must be reviewed and approved by Commerce prior to any marketing activities.

Tenant Selection Plan

Owners/managers of HOME and HTF rental projects must establish a written tenant selection plan consistent with requirements at 24 CFR 92.253(d) for HOME and 24 CFR 93.303 for HTF. The plan must specify objective selection criteria related solely to program qualifications and the tenant's ability to pay the rent and abide by the terms of the lease (e.g., household income, housing history, credit history, criminal record). Owners/managers must apply criteria consistently to all applicants in accordance with

²⁹ <https://www.hud.gov/sites/documents/935-2A.PDF>

³⁰ <https://www.hud.gov/sites/documents/935-2B.PDF>

³¹ <https://www.hudexchange.info/resource/2092/home-lease-addendum/>

³² <https://www.hud.gov/sites/documents/91067.doc>

fair housing laws and must expressly prohibit bias such as discrimination and favoritism. Selection criteria, however, may give preference to persons with special needs so long as such preference aligns with project objectives and Commerce provides its approval. Furthermore, insofar as is practical, tenant selection should be based on a waiting list that establishes the chronological order of application of each tenant.

- Tenant selection procedures should describe
 - How vacant units will be filled;
 - Unit occupancy requirements;
 - Nondiscrimination policies and the affirmative marketing procedures;
 - Marketing strategy for accessible units;
 - Tenant selection records that must be maintained; and
 - For HOME projects, CHDO tenant participation.

Owners/managers shall provide prompt written notification to rejected applicants, and all notifications must clearly state reason/s for rejection.

Tenant selection plans must be reviewed and approved by Commerce prior to any leasing activities.

Application for Housing

A uniform application must be used for all applicants seeking rental housing at HOME-/HTF-assisted properties. Similarly, developments with homes for purchase must also have an application that all applicants complete. In addition to gathering income and other household information, applications must collect race and ethnicity data such that the project's AFHMP (if applicable) can be reviewed for effectiveness. The following race and ethnicity categories are used in AFHMPs and are recommended for use in applications:

- White
- American Indian or Alaska Native
- Asian
- Black or African American
- Native Hawaiian or Other Pacific Islander
- Hispanic or Latino
- Persons with Disabilities
- Families with Children
- Other ethnic group, religion, etc. (specify)

Applications must be reviewed and approved by Commerce prior to any marketing activities.

Lease

Leases between the tenant and owner of the HOME/HTF rental property shall be for 1 year, unless by mutual agreement between the tenant and the owner. Owners may terminate tenancy or refuse to renew a lease only upon 30 days' written notice, and only for serious or repeated violation of the terms and conditions of the lease; violation of applicable federal, state, or local law; completion of the tenancy period for transitional housing; or for other good cause. Owners may not terminate tenancy or refuse to renew a lease due to an increase in tenant's income.

Owners are prohibited from including unfair provisions in HOME project leases. In accordance with the provisions of 24 CFR 92.253 for HOME and 24 CFR 93.303 for HTF, the following terms are prohibited from HOME and HTF project leases:

- **Agreement to be sued:** Agreement by the tenant to be sued, admit guilt, or consent to a judgment in favor of the owner in a lawsuit brought in connection with the lease.
- **Treatment of personal property:** Agreement by the tenant that the owner may take, hold, or sell personal property of household members without notice to the tenant and a court decision on the rights of the parties. This prohibition does not apply to an agreement by the tenant concerning disposition of personal property remaining in the unit after the tenant has moved out. The owner may dispose of personal property in accordance with state law.
- **Excusing owner from responsibility:** Agreement by the tenant not to hold the owner or the owner's agents legally responsible for actions or failure to act, whether intentional or negligent.
- **Waiver of notice:** Agreement by the tenant that the owner may institute a lawsuit without notice to the tenant.
- **Waiver of legal proceedings:** Agreement by the tenant that the owner may evict the tenant or household members without instituting a civil court proceeding in which the tenant has the opportunity to present a defense or before a court decision on the rights of the parties.
- **Waiver of a jury trial:** Agreement by the tenant to waive any right to a jury trial.
- **Waiver of right to appeal court decision:** Agreement by the tenant to waive the tenant's right to appeal or otherwise challenge in court a decision in connection with the lease.
- **Tenant chargeable with cost of legal actions regardless of outcome:** Agreement by the tenant to pay attorney fees or other legal costs even if the tenant wins the court proceeding by the owner against the tenant. The tenant, however, may be obligated to pay costs if the tenant loses.
- **Mandatory supportive services:** Agreement by the tenant to participate in mandatory supportive services with an exception, in limited circumstances, for residents of transitional housing.

In general, Commerce will provide a standard form lease addendum for use by owners of HOME- and HTF-assisted rental housing that will provide required tenant protections and eliminate any prohibited provisions from use by owners.

Leases must be reviewed and approved by Commerce prior to any leasing activities.

Violence Against Women Act (VAWA)

Rental projects must comply with the requirements of VAWA as required by 24 CFR 92.359 for HOME and 24 CFR 93.356 for HTF. VAWA provides certain additional resident protections to applicants and residents who are victims of domestic violence, sexual assault, and/or stalking. In general, among other requirements, owners must provide notices to all residents of the VAWA provisions, may not deny an application or terminate or refuse to renew a lease as a result of a person's status as a victim or on the basis of criminal activity related to such status, and must allow for the bifurcation of a lease in order to evict the perpetrator of such criminal activity while allowing the victim to maintain occupancy. (For more information, see [Violence Against Women Act \(VAWA\)](#) under Section 4.7.)

All leases for HOME-/HTF-assisted units must incorporate the VAWA Lease Addendum (Form HUD 91067).

4.10 Project Completion

Tools and Resources:

- ✓ *Project Set Up and Completion Report – Multifamily Development*
- ✓ *Project Set Up and Completion Report – Single-Family Development*
Certification of Completion and Status of Funds Report -AND- Conditional / Final Closeout Certification
- ✓ *Project Completion Monitoring Checklist (forthcoming)*

Project completion as defined by 24 CFR 92.2 for HOME and 24 CFR 93.2 for HTF, among other things, requires that all construction activity be complete, all HOME/HTF funds be drawn from the U.S. Treasury, and project completion information be entered into IDIS.

Project Completion Monitoring

When a project nears construction completion, grantees must notify Commerce of their timeline for closeout. Commerce will then schedule a project completion monitoring to ensure that the project is fully compliant and on track to close in accordance with the grantee's timeline. Commerce will work with grantees as needed through closing to ensure all program requirements are met.

Final Disbursement of Funds

Once the grantee has worked through project completion monitoring, they can request final reimbursement. It should be noted that the following must be completed and submitted to Commerce before a final disbursement of funds is issued:

- A Certificate of Occupancy
- A Project Set Up and Completion Report
- Evidence satisfactory to Commerce that the project has been completed lien free and substantially in accordance with plans and specifications
- Certification of Completion and Status of Funds Report (Note: Closeout will be conditional until all audit requirements are met)
- Supporting evidence as may be requested by Commerce to substantiate all payments which are to be made out of the final disbursement and/or to substantiate all payments then made with respect to the project
- Cost Certification performed by a certified public accountant (HTF only)

On rare occasions, final disbursement of funds may occur prior to all HOME-/HTF-designated units being occupied.

Subsequent to final disbursement of funds, HOME and HTF grantees must also submit to Commerce an audit/s. For HOME, audit/s must cover the period grant funds were disbursed for their assisted project. For HTF, audit/s must be provided beginning the first year following the cost certification and ending the last year of the affordability period (24 CFR 93.404(c)(2)(iii)).

Project Completion Information

Within 90 days of when the certificate of substantial completion is issued by the project engineer or architect, the grantee must submit a *Project Set Up and Completion Report* (see Tools and Resources) to Commerce for review and approval. This report provides Commerce with information on the total costs incurred; the final completion date; any significant problems encountered in carrying out the project; the designated street address or addresses of multi-family projects and, if applicable, leasing office/s;

specific unit designations (e.g., unit number or lettering such as #12 or Apartment B-3) for all HOME/HTF units in multi-family projects; and resident income and demographic data. If submission of the report is delayed for any reason, a request with justification for extending the 90 days is required.

Project Completion Notification

Within 30 days of approving the *Project Set Up and Completion Report*, and subsequent to project completion monitoring and final disbursement of funds, Commerce will issue a notice of project completion (either conditional or final). Once the notice of project completion is issued, the project is considered complete and the file is closed. Upon closeout, no additional disbursements of funds will be made and completion of the project will be reported in IDIS.

Grantees are required to submit demographic data at lease up or at time of sale for all HOME-/HTF-funded units. Data shall include elderly status, race, gender, female head of household, number of household members, and percent AMI. In addition, prior approval is required of all leases for HOME-/HTF-assisted units. Commerce may require prior approval for some or all resident income certifications at its discretion (e.g., when a new grantee undertakes lease up or when grantees undertaking lease up have new staff). Prior to sale of HOME-assisted single-family homes, Commerce will underwrite the transaction, review deed restrictions, occupancy agreements, trust indentures, etc. Grantees must be aware that the affordability period does not begin for HOME-/HTF-funded units until the final request for reimbursement is processed, all demographic data is verified, and the project is entered as completed in IDIS.

4.11 Initial Occupancy

HOME

In accordance with 24 CFR 92.252, HOME-funded rental projects must comply with the following deadlines and requirements as evidenced by occupancy of residents with a written lease that complies with the requirements of 24 CFR 92.253:

- Within 6 months from the date of project completion, if a rental unit remains unoccupied, the Owner will provide to Commerce information about current marketing efforts and, if appropriate, an enhanced plan for marketing the unit so that it is leased as quickly as possible.
- Within 18 months from the date of project completion, if efforts to market the units are unsuccessful and units remain unoccupied by an eligible resident, Commerce will require repayment of all HOME funds invested in each vacant unit. A unit that has not served a low- or very low-income household, as applicable, has not met the purposes of the HOME program. Therefore, the costs associated with the unit are ineligible.

See Section 2.9 ([Income and Rent Restrictions](#)) for information about income restrictions at initial occupancy.

In accordance with 24 CFR 92.254(a)(3), HOME-funded homeownership projects must be sold to an eligible homebuyer within 9 months of the date of completion of construction. If there is no sales contract within 9 months, the housing must be rented to an eligible tenant.

HTF

HUD does not currently impose specific lease-up deadlines on HTF-funded projects, but Commerce will generally require that projects, which are not complete within the HOME timelines noted above, repay HTF funds.

5. Project Monitoring During the Period of Affordability (POA)

Following project completion, Commerce is required to monitor projects for ongoing compliance with HOME/HTF requirements. This long-term monitoring continues throughout a project's "period of affordability" or POA and is completed in accordance with the minimum requirements of 24 CFR 92.252(e) for HOME and 24 CFR 93.302(d) for HTF. Rehabilitation and new construction projects for homeownership must maintain affordability requirements outlined by Commerce. Rehabilitation and new construction rental projects funded with HOME/HTF shall maintain affordability requirements as follows: under HOME, up to 15 years for acquisition or rehabilitation projects and 20 years for new construction projects; under HTF, this period is 30 years, regardless of project type (see tables below).

Length	HOME
5 Years	Rental Acquisition/Rehab <\$15,000 Per Unit
10 Years	Rental Acquisition/Rehab \$15,000-\$40,000 Per Unit
15 Years	Rental Acquisition/Rehab >\$40,000 Per Unit
20 Years	All Rental New Construction (Any amount)

Length	HTF
30 Years	Any amount of funds (new construction and rehabilitation)

For rental properties, monitoring through the POA includes, but is not limited to, reviewing income and rent restrictions, financial stability, property standards, tenant protections, and marketing and fair housing. In addition to requiring annual reporting, Commerce will conduct on-site monitoring visits to rental properties as required by HOME regulations at 24 CFR 92.504(d)(1) and HTF regulations at 24 CFR 93.404. Visits will involve, at minimum, a review of project records and an inspection of the premises including common areas and residential units.

For single-family development, Commerce ensure homes are the principal residence of the homeowner throughout the POA. If assisted homes are sold during the POA, the grantee must provide documentation that subsequent buyers are income-eligible and meet Commerce's underwriting standards, as outlined in the grantee's management plan.

For information about managing a project through its period of affordability or POA, and for tools and resources to assist with management, please consult applicable manuals published by Commerce.³³

³³ Information about POA compliance for HOME rental properties is available in HUD's resource *Compliance in HOME Rental Projects: A Guide for Property Owners*, which is available online at <https://www.hudexchange.info/resource/2395/compliance-in-home-rental-projects-a-guide-for-property-owners/>.

6. Quick Reference

	CDBG – 24 CFR 570	HOME – 24 CFR 92	HTF – 24 CFR 93
Eligible Applicants	Non-entitlement cities, towns, counties	All cities, towns, counties; nonprofits including CHDOs; public housing authorities	Entitlement cities; nonprofits, public housing authorities
Uses	Acquisition, rehabilitation, reconstruction, new construction (in limited circumstances) of rental or single-family homes	Acquisition, rehabilitation, reconstruction, new construction of rental homes Development of single-family homes for sale to homebuyers Down payment and closing cost assistance for homebuyers	Acquisition, rehabilitation, reconstruction, new construction of rental homes Note: New construction activities must comply with environmental provisions that prohibit use on prime farmland, farmland of statewide importance, farmland of local importance, or unique farmland.
Grant Caps	\$600,000	No cap; funding levels are need based and determined on a per-project basis	No cap; funding levels are need based and determined on a per-project basis
Match Requirements	No match required	Up to 25% match required (See application guidelines for minimum match requirements)	No match required
Income Definitions	80% AMI = “Low to Moderate Income” or “LMI”	80% AMI = “Low Income” 50% AMI = “Very Low Income”	30% AMI = “Extremely Low Income”
Income Limits and Targeting	Households with incomes at or below 80% AMI	Households with incomes at or below 80% AMI Note: (1) At initial occupancy, at least 90% of households assisted must have incomes at or below 60% AMI. (2) Throughout the POA, for properties with 5 or more HOME-assisted units, at least 20% of households assisted must have incomes at or below 50% AMI (Low HOME rents apply).	Households with incomes at or below 30% AMI

	CDBG – 24 CFR 570	HOME – 24 CFR 92	HTF – 24 CFR 93
Rent Limits	Does not apply	HUD publishes HOME rent limits Note: (1) For properties with 5 or more HOME-assisted units, at least 20% of households assisted must pay Low HOME rents. Remaining households assisted may pay High HOME rents. (2) If project-based rental assistance (PBRA) is available, rent is set at the contract rent, while residents pay 30% of household income for rent and utilities.	HUD publishes HTF rent limits Note: If project-based rental assistance (PBRA) is available, rent is set at the contract rent, while residents pay 30% of household income for rent and utilities.
Period of Affordability (POA)	Does not apply to rental projects For homeowner projects, same as HOME	Rental acquisition/ rehabilitation and homebuyer: 5 years under \$15,000/unit 10 years \$15,000-\$40,000/unit 15 years over \$40,000/unit Rental new construction: 20 years, regardless of amount per unit	30 years, regardless of amount per unit
Environmental Considerations	City/town/county is the responsible entity; Commerce must provide the environmental release of funds prior to grantee taking any choice limiting action	If city/town/county is the grantee, city/town/county is the responsible entity and Commerce must provide the environmental release of funds prior to grantee taking any choice limiting action If nonprofit or public housing authority is the grantee, Commerce is the responsible entity and HUD must provide the environmental release of funds prior to grantee taking any choice limiting action	The grantee must document the property meets applicable property standards, to include environmental provisions 24 CFR 93.301 A release of funds is not required
Labor Standards – Davis Bacon	Applies to group homes and other construction, with the exception of rehabilitation of residential properties with fewer than 8 units	Applies to projects with 12 or more HOME-assisted units	Does not apply